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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 21 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SAMANTHA E.,

Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC
SECURITY and THOMAS G. JR.,

Appellees.

2 CA-JV 2011-0044

THOMAS G.,

Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC
SECURITY and THOMAS G. JR.,

Appellees.

2 CA-JV 2011-0045

(Consolidated)

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19306100

Honorable Karen S. Adam, Judge

AFFIRMED

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V Á S Q U E Z, Presiding Judge.

¶1 Samantha E. and Thomas G. appeal from the juvenile court's ruling terminating their parental rights to their son, Thomas G. Jr., born in December 2009. They argue the evidence was insufficient to support the court's conclusion that termination was warranted on grounds of neglect, *see* A.R.S. § 8-533(B)(2), and mental deficiency, *see* § 8-533(B)(3). Samantha also argues the Arizona Department of Economic Security (ADES) failed to prove it had made diligent efforts to provide appropriate reunification services, as required before parental rights are terminated pursuant to § 8-533(B)(3). For the following reasons, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent's rights is in the children's best interests.

A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 As described in the juvenile court’s ruling, Thomas Jr. was removed from his parents’ custody within two weeks of his birth after medical providers expressed concern that Samantha and Thomas would be unable to meet their son’s needs or respond appropriately to emergencies. During a medical consultation about the newborn’s failure to gain weight, Thomas Jr. had suffered “an episode of apnic synopsis (otherwise known as cyanotic episode), where he stopped breathing and turned blue around the lips for three to four seconds.” Samantha and Thomas reported Thomas Jr. had suffered a similar episode the previous night and had stopped breathing for five to seven seconds, but the parents had failed to recognize the need to seek medical attention. Thomas Jr. was hospitalized and diagnosed with significant reflux that was to be treated with medication and special feeding instructions. The juvenile court adjudicated Thomas Jr. dependent after a contested hearing and approved a case plan goal of reunification.

¶4 After conducting psychological evaluations, Dr. Lorraine Rollins reported Samantha's mild mental retardation constituted a "limiting factor on her parenting ability" that could not be expected to improve, creating "a significant risk for neglect or some form of abuse." She found Thomas exhibited a low average knowledge of "receptive vocabulary," with "weak academic skills," measured as below third-grade level, that "can negatively impact parenting." She also expressed "significant concerns about [his] judgment," particularly with respect to his ability to gauge and respond to "potential risk to his child." The parents were provided with multiple reunification services, including supervised visitation, the assistance of parent aides, parent-child relationship therapy, and, for Thomas, individual counseling. After a November 2010 permanency hearing, the juvenile court found Thomas Jr. could not be returned to his parents without great risk to his health and safety and directed ADES to file a motion to terminate parental rights.

¶5 In an under-advisement ruling after a four-day termination hearing, the juvenile court ordered termination of Samantha's and Thomas's parental rights on both grounds alleged in ADES's motion: neglect and inability to parent due to mental illness or mental deficiency. *See* § 8-533(B)(2) and (3). In addressing the ground of mental deficiency, the court wrote:

[Samantha] has significant cognitive and developmental delays which prevent her from being able to parent consistently, competently and capably over a prolonged period of time. [Thomas] has significant reading and mathematics deficiencies, and has not demonstrated the ability to successfully overcome those short-comings with various coping mechanisms. There are reasonable grounds to

believe that both parents' conditions will continue for a prolonged, indeterminate period.

The court further found that, although Samantha and Thomas had been offered “an extra[]ordinary array of supportive services” to assist them in developing their parenting skills and had complied with their case plan tasks, “they have not benefitted in ways that would allow them to parent Thomas [Jr.] safely.”

¶6 Specifically, the court cited evidence that Samantha “would not be capable of parenting the child alone, and . . . he would be at risk in her care,” as well as evidence that Thomas appeared “unable to recognize and acknowledge [Samantha]’s shortcomings and to assure CPS and the Court that he would protect the child from harm.” This evidence included Rollins’s testimony, as well as testimony from Martha Underwood, who had provided individual counseling for Thomas, and Jessica Jordan, an early childhood family therapist who had worked with the family from April through October 2010.

¶7 On appeal, both parents argue the evidence was insufficient to support termination under § 8-533(B)(3), which requires proof “[t]hat the parent is unable to discharge parental responsibilities because of . . . mental deficiency . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” In essence, the parents maintain that the juvenile court gave insufficient weight to the testimony of parent aides Julie Pradier and Lori Rodriguez, each of whom had testified that Samantha and Thomas had improved their parenting skills and were able to parent Thomas Jr. effectively.

¶8 But it is the juvenile court’s role to evaluate and weigh conflicting evidence; we will not reweigh the evidence on appeal. *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (juvenile court “in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts”). We cannot say, as a matter of law, that no reasonable fact-finder could have found clear and convincing evidence supported termination pursuant to § 8-533(B)(3); accordingly, we will not disturb the court’s ruling. *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266.

¶9 Neither do we find merit in Samantha’s claim that the state failed to prove it made a reasonable effort to reunify this family. *See Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶ 42, 971 P.2d 1046, 1054 (App. 1999) (ADES must prove reasonable effort to provide rehabilitative services, or futility of such services, before parent’s rights may be terminated on § 8-533 ground of mental illness). Samantha does not dispute that appropriate services were provided for her and Thomas, but argues ADES’s efforts were insufficient because the CPS case manager, Taryn Raterink, failed to communicate directly with parent aides Pradier or Rodriguez to “assess the effectiveness of the[ir] services and the parents’ progress” during supervised visitations. We decline to find the juvenile court erred in finding, implicitly, that ADES had made reasonable efforts to reunify the family. A reasonable person readily could find that ADES’s extensive reunification efforts were not rendered insufficient by Raterink’s lack of personal consultation with the parent aides, particularly when she had relied instead on the detailed, written reports they had submitted.

¶10 Because we conclude sufficient evidence supports the juvenile court's termination of parental rights pursuant to § 8-533(B)(3), we need not address the parents' arguments that the court erred in finding termination also was warranted on the ground of neglect. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) (appellate court need not consider challenge to alternate grounds for severance if evidence supports any one ground). Neither parent has challenged the court's determination that termination was in Thomas Jr.'s best interests.

¶11 Accordingly, the order terminating Samantha's and Thomas's parental rights is affirmed.

/s/ *Garye L. Vásquez*

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ *Philip G. Espinosa*

PHILIP G. ESPINOSA, Judge

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Judge